(44)

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. No. 736 of 2004

Sanjay Raj Yual

Versus

Ashok Kumar & another

POST FOR JUDGMENT ON 17.4.2007

Sd/-
DHIRENDRA MISHRA
Judge

(15)

HIGH COURT OF CHHATTISGARH AT BILASPUR

M. A. NO. 736 OF 2004

APPELLANT
Owner of the vehicle/ Non-applicant No.1

Sanjay Raj Yual, son of Emanual Yual, aged about 37 years, R/o B-299, MCH Colony, Gevra Project, S.E.C.L. District Korba (C.G.)

Vs

RESPONDENTS

1. Ashok Kumar, s/o Late Karurahar Mistri, aged about 25 years, r/o at present MD 66 Dipika Colony, (S.E.C.L) Dipika, Tah. Katghora, Distt. Korba (C.G.)

CLAIMANT

2. The United Insurance Company Limited, Through Branch Manager, Branch Bilaspur (CG).

NON-APPLICANT NO.2

Present:

Mr. M.K. Bhaudri, Advocate for the appellant.

Mr. Ratnesh Agarwal, Advocate for respondent No.1.

Mr. Dashrath Gupta, Advocate for respondent No.2.

J U D G M E N T

(Delivered on 17/04/2007)

Dhirendra Mishra, J

1) This is an appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') preferred by the owner of jeep bearing registration number MP26-E-5752 against the award dated 15th May, 2004 passed in Claim Case No.80/2001 by the Additional Motor Accident Claims Tribunal, Korba (C.G.) whereby learned Claims Tribunal has awarded a sum of Rs.1,50,000/- to the claimant/ respondent No.1 herein and absolved respondent No.2-Insurance Company from the liability of payment of compensation to the claimant on the ground that driver of vehicle did not have valid driving

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license at the time of accident and as such there was a breach of insurance policy condition.

2) Undisputed facts are that applicant Ashok Kumar filed an application under Section 166 of the Act stating therein that he is driver by profession and non-applicant No.1 is his employer, who was paying him monthly salary of Rs.2,500/-. On the date of incident i.e. 10.3.1999 at about 1.00 p.m. Trax Jeep driven by the applicant met with an accident near village Chotiya as a result of which he sustained injuries over his head & legs, he was admitted in the hospital and due to injuries sustained by him, he has become permanently disabled.

3) Non-applicant No.1/appellant herein denied the averments made in the claim application and also submitted that the vehicle was insured by non-applicant No.2-Insurance Company and therefore, if any compensation is awarded in favour of the claimant, then the insurance company is liable for its payment.

4) Non-applicant No.2 admitted that the vehicle in question was insured by them for a period of one year commencing from 20.3.1998. However, it was contended that the vehicle was being driven as per directions of the owner, driver did not have valid driving license, the incident took place because of negligence of the applicant himself and therefore, no compensation can be awarded to the applicant.

5) On the basis of the pleadings of the respective parties, issues were framed by the claims tribunal and claim was awarded with the finding that non-applicant No.1 was the owner of vehicle involved in the incident, it was insured with non-applicant No.2, accident occurred due to failure of steering, the applicant-driver was not aware of this mechanical failure and the applicant himself was responsible for the accident and on the basis of medical report it has been held that the applicant has sustained permanent disability and compensation has been assessed at Rs.1,50,000/- including expenses towards treatment of Rs.56,793/-.

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It has been further held that the applicant has not filed driving license though he has claimed that he is having driving license and he has also not assigned any reason for not filing the driving license and with this finding it has been held that there is a breach of condition of insurance policy as the vehicle was being driven by a person without having any valid driving license at the time of accident and therefore, insurance company has been absolved from the liability of paying compensation to the claimant and the award has been passed against the non-applicant No.1/owner of vehicle alone.

6) Learned counsel for the appellant has contended that finding of the claims tribunal is contrary to the material available on record and as such perverse. He submits that driving license of respondent No.1-driver was produced and proved by the appellant as document of Ex.P-161 and the same is available on record, whereas, the tribunal has arrived at a finding that the driver did not have valid driving license overlooking the document of Ex.P-161 available on record. It is further contended that the onus of proving that the driver did not have driving license at the time of accident lies upon the insurance company, but no evidence has been led by the insurance company to establish that the driving license produced by the claimant was not a valid driving license, even then the tribunal has absolved the insurance company on the ground of breach of insurance policy condition with an erroneous finding that the driver did not have the driving license.

7) On the other hand, learned counsel for respondent No.2-Insurance Company supports the award of the tribunal below.

8) I have heard learned counsel for the respective parties and perused the material available on record.

9) The only issue involved in this appeal is whether claims tribunal was justified in saddling the appellant-owner of vehicle involved in the accident with the liability of payment of compensation absolving respondent No.2-insurance company from payment of compensation on

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the ground that the driver did not have valid driving license at the time of accident and as such owner has committed a breach of policy condition.

10) From perusal of the document Ex.P-161, which is available on record and the same has been proved by the applicant himself, appears that Licensing Authority, R.T.O, Bilaspur has issued driving license No. A/621/BSP/90 on 16.10.1990 to the claimant Ashok Kumar for driving light motor vehicle and license is valid from 16.10.1990 to 15.10.2010 and there is no evidence available on record to show that the insurance company, except making averments and reply that the driver was not having valid driving license at the time of accident, has adduced any evidence to establish that driving license produced by the applicant is fake or forged. It is settled law that onus of proving breach of insurance policy condition that driver did not have valid driving license lies upon the insurance company. The insurance company has not even examined any witness on their behalf. Thus, the finding of the tribunal that the driver of vehicle at the time of accident did not have valid driving license and as such there is a breach of insurance policy condition, is the finding contrary to the material available on record and the same cannot be sustained.

11) In the result, the appeal preferred by the appellant/owner of the vehicle is allowed, the finding of the claims tribunal absolving respondent No.2-Insurance Company from the liability of payment of compensation to the claimant is hereby set aside and it is held that respondent No.2-Insurance Company is liable for payment of Rs.1,50,000/- to the claimant by way of compensation with the other reliefs, as awarded by the claims tribunal in Para 23 of the award. No order as to costs.

Sd/-
DHIRENDRA MISHRA
Judge

Roshan/-